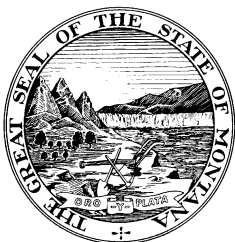


DEPARTMENT OF ADMINISTRATION
GENERAL SERVICES DIVISION
STATE PROCUREMENT BUREAU

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Ethical Obligations
State Procurement Bureau
Department of Administration
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FREQUENTLY ASKED QUESTIONS

1. I just received a gift from a vendor with whom our agency does frequent business. Should I accept it?

First, let's look at the law. Section 2-2-104, MCA, provides that we may not accept something of substantial economic benefit "that would tend improperly to influence a reasonable person ... to depart from the faithful and impartial discharge of the person's public duties; or ... that a reasonable person in that position should know ... is primarily for the purpose of rewarding the person for official action taken."

A "gift of substantial value" is defined in statute as something with a value of \$50 or more for an individual. It does not include food or beverages that you consume while participating in a charitable, civic, or community event which is related to your employment or that you are attending in an official capacity.

What does all that mean for procurement officials? Unfortunately, as we have all learned, sometimes painfully, perception is reality. A business lunch with one vendor may easily be misconstrued by competing firms in the public procurement "fishbowl" in which we operate. Even nominally valued advertising gifts such as coffee mugs and pens can convey a powerful public message and may be interpreted as an endorsement of the business. In the end, we suggest that nonacceptance of any gift or meal is the best policy.

2. I need to select an evaluation committee for an RFP in my department. What do I need to be aware of concerning potential conflicts of interest?

Again, everything we do should be guided by the principle of trying to avoid any potential appearance of a conflict of interest. Evaluation committee members need to be free of *any* involvement with the offerors. Once the RFP is released, committee members must particularly avoid any contact with the potential offerors with regard to the particular RFP and refer all questions posed to them by an offeror to the procurement officer in charge of the process. Department policies are now also requiring that even just an *offer* of a gift in any form must be

reported to the department. Once evaluation committee members are selected, they are asked to sign a “Non-Conflict of Interest Statement.” If there is a question about a possible conflict, agency counsel should be consulted.

3. *What if I get offered a job or a board position from an offeror?*

First, if an offer of that nature occurs before or during the evaluation process, you should immediately report the situation to the procurement officer. If you are even contemplating taking such an offer, you should immediately disqualify yourself from the evaluation process.

If a job-related offer occurs after the contract is awarded, you need to check into section 2-2-105, MCA, concerning the state ethics law and its impact on voluntary termination.

4. *Montana is kind of a small place ... I’m bound to have some sort of conflict of interest with some people or businesses.*

Admittedly, it is hard not to accidentally bump into an offeror or to not develop a relationship with a vendor you have frequent contact with. All the laws, rules, and policies can’t possibly address every potential situation, nor is it inevitable that every kind of involvement with a vendor is bad. What we need to always keep in mind is the weight of public trust that is put on us as procurement officials. More and more, the topic of standards of conduct is being debated in the public arena, from offices and courtrooms to legislative committee rooms. As we have said, appearance is everything and any erosion of honesty, integrity, and openness is more injurious to public procurement than most other public pursuits. A shadow of doubt can be as harmful as misconduct itself.

5. *I often meet with vendors prior to developing an RFP or IFB just so I know what supplies or services are available. Is this okay?*

Yes, normally. Obviously it is critical for procurement officials to know what is available in the marketplace. *Gathering information* for the development of specifications or the content of RFP/IFB is different than *evaluating* a vendor’s proposal. But agencies using certain federal funds need to be aware of federal regulation 45 CFR Subtitle A Section 74.43 that prohibits contractors from competing for projects in which they were involved in developing. We suggest agencies work with legal counsel if this situation arises.

6. *What are the repercussions for violation of an ethics policy?*

Between the statutes (primarily section 2-2-121, MCA) and state and department policies, enforcement of ethics violations can range from disciplinary action by the department to civil or criminal actions in court. Agencies should refer to their department’s policy on the subject.